

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to subsidized adoptions and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 201, “Subsidized Adoptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6, Social Security Act Section 473(a)(4)(A) and (B), and 45 CFR 205.10.

Purpose and Summary

The administrative rules for subsidized adoptions are being revised to update outdated language, clarify eligibility criteria for special needs children, and clarify allowable expenses under special services and to add a provision to suspend adoption subsidy under defined circumstances.

The proposed amendments promote consistency in the application of eligibility criteria through clarification of the rules. Federal policy has been updated to allow states to suspend adoption subsidy payments when concerns arise that the family is not financially supporting the family’s adoptive child. Suspension of adoption subsidy payments was not previously allowed by federal policy.

Adoptive families would be affected by these amendments, potentially to their detriment. These amendments formalize the ability of the Department to assess and suspend a family’s use of adoption subsidy funds if concerns are brought forward that the adoptive child is not being supported. Payments would be suspended during the Department’s review and would be reinstated if the family is found to be supporting the family’s adoptive child or if the family agrees to provide documentation that the family is providing appropriate support and provides that documentation. These amendments would allow the Department to terminate the subsidy agreement if the family is not supporting the adoptive child and will not agree to provide and document support for the adoptive child.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 16, 2018. Comments should be directed to:

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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—201.2(600)**, definitions of “Maintenance subsidy,” “Mental health professional,” “Mental retardation professional,” “Presubsidy,” and “Special services subsidy,” as follows:

“Maintenance subsidy” means a monthly payment to assist the family in meeting the living expenses and expenses related to the care of a special needs child in covering the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

“Mental Qualified mental health professional” means the same as defined in rule 441—24.1(225C) a person who meets all of the following conditions:

1. Holds a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, or psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and
2. Holds a current Iowa license when required by the Iowa professional licensure laws for persons practicing as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker; and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and services needs and in providing mental health services.

“~~Mental retardation~~ Qualified intellectual disability professional” means a person who has at least one year of experience working directly with persons with ~~mental retardation~~ an intellectual disability or other developmental disabilities and who is one of the following:

1. A doctor of medicine or osteopathy.
2. A registered nurse.
3. A person who holds at least a bachelor’s degree in a human services field including, but not limited to, social work, sociology, special education, rehabilitation counseling, ~~and~~ or psychology.

“Presubsidy” means payment for maintenance or special services for a special needs child who is placed in an adoptive home and who meets all eligibility criteria for maintenance subsidy but whose adoption is not finalized.

“Special services subsidy” means payment to a provider or reimbursement to the parent for medical, dental, therapeutic, or other services, equipment or appliances required by a child because of a handicapping condition in order to meet the child’s identified special needs.

ITEM 2. Amend rule 441—201.3(600) as follows:

441—201.3(600) Conditions of eligibility or ineligibility.

201.3(1) The child is eligible for subsidy when the department or a private agency has documented that it has been unable to place the child in an appropriate adoptive home without a subsidy and the child is determined to be a child with “special needs” based on one or more of the following reasons:

a. The child has a medically diagnosed disability, as determined by a physician, an advanced registered nurse practitioner or a physician assistant, which substantially limits one or more major life activities, requires ongoing professional treatment, assistance in self-care, or the purchase of special equipment impacts the child’s ability to perform daily living skills, and is expected to last 12 months or longer.

b. The child has been determined by a qualified ~~mental retardation~~ intellectual disability professional to be ~~mentally retarded~~ intellectually disabled.

c. ~~Effective April 20, 2004, or later, the~~ The child has been determined by a qualified professional to be at high risk of developing a qualifying medical, mental, or emotional condition as defined in this subrule. A child in this group is eligible for subsidy of nonrecurring expenses only.

d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child’s mental, intellectual, or social functioning, and for which the child requires ongoing professional services.

e. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child’s age or significantly interferes with the child’s intellectual, social and personal adjustment and which requires ongoing treatment.

f. The child is aged eight five or over and Caucasian.

~~*g.* The child is aged two or older and is a member of a minority race or ethnic group or the child’s biological parents are of different races.~~

~~*h.*~~ *g.* The child is a member of a sibling group of three or more children who are placed in the same adoptive home.

201.3(2) A child who enters the United States from another country on the basis of a visa classifying the child as an orphan, in accordance with the Immigration and Naturalization Act, for the purpose of adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses. ~~A child entering the country for adoption may be eligible for subsidy for nonrecurring expenses, not to exceed \$500, in the following situations:~~

~~*a.* Rescinded IAB 8/11/99, effective 10/1/99.~~

~~*b.* The child from another country who meets the criteria in subrule 201.3(1) and whose adoption is finalized after June 14, 1989, must file an application on Form 470-0744, Application for Adoption Subsidy, and complete Form 470-0749, Adoption Subsidy Agreement, before or at the time of a final decree of adoption. The claim for reimbursement must be filed on Form GAX, General Accounting Expenditure, within two years of the date of the adoption decree and must include receipts.~~

~~*c.* If the adoptive placement disrupts prior to finalization or if the parental rights of the adoptive parents are terminated after the adoption is finalized and the department is named guardian of the child, the child may be eligible for subsidy in another adoptive placement.~~

201.3(3) ~~Maintenance and child~~ Child care subsidies for children who were determined to be eligible before January 1, 2004, shall continue ~~unless one of the conditions for termination defined in 441—201.7(600) is present~~ if child care was written into the Adoption Subsidy Agreement and the need for child care continues. The child care subsidy payment shall not exceed the applicable reimbursement rate under the child care assistance program as specified in 441—subrule 170.4(7).

201.3(4) No change.

201.3(5) The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive a subsidy ~~through the~~ to the age of 21 due to the child's physical, intellectual, or mental health disability.

a. The disability shall be diagnosed by a physician, a qualified mental health professional, or a qualified ~~mental retardation~~ intellectual disability professional.

b. The diagnosis shall be current within one year ~~of~~ prior to the child's eighteenth birthday.

c. Documentation of the child's diagnosed disability shall be provided by the child's parents to the department to make the determination of continued eligibility to the age of 21.

ITEM 3. Amend rule 441—201.4(600) as follows:

441—201.4(600) Application. Application for presubsidy or subsidy for a special needs child in the guardianship of the department shall be made on Form 470-0744, Application for Subsidy, at the time of the adoptive placement of the child, or at any time in the adoptive process before finalization of the adoption.

201.4(1) and **201.4(2)** No change.

201.4(3) The effective date for the Adoption Subsidy Agreement will be the date the agreement is signed by ~~all parties~~ the adoptive parents and a representative of the department, which may be the date the child is placed in the adoptive home or any date up to and including the date the adoption is finalized. The agreement shall state the amount of the presubsidy or subsidy, ~~and~~ the frequency and duration of payments and the conditions under which the agreement may be terminated.

201.4(4) No change.

201.4(5) A child in the guardianship of a licensed child-placing agency may be eligible for adoption subsidy when one of the following conditions is met:

a. The child receives or is eligible to receive SSI based on a diagnosed disability, or

b. The child received federally funded adoption subsidy in a prior adoption.

ITEM 4. Amend subrule 201.6(1) as follows:

201.6(1) *Special services only.*

a. ~~Reimbursement to the adoptive family or direct payment made to a provider is suspended from January 1, 2010, to June 30, 2010, for any special services negotiated in that period except for nonrecurring expenses as defined in subparagraph (7). Reimbursement to the family or direct payment to a provider may be made for the following special services needed to meet the needs of the child.~~

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the service area manager or designee and when one of the following applies:

1. to 3. No change.

Reimbursement to non-Medicaid providers shall be limited to the Medicaid rate.

(2) No change.

(3) ~~Medical services not covered by the Medicaid program shall be limited to an additional premium amount due to the child's special needs to include the child in the family's health insurance coverage group when the child, either alone or with the family, resides outside the state of Iowa and that state's Medicaid does not cover a needed service, or a provider enrolled with Iowa Medicaid cannot be secured.~~ An adoption subsidy payment shall not supplement the Medicaid payment rate to a Medicaid provider or a non-Medicaid provider.

(4) ~~Child care, if the family has entered into a presubsidy or subsidy agreement on or before June 30, 2004, that contains a provision for child care reimbursement. Child care subsidy payments shall not exceed the maximum rates established in 441—paragraph 170.4(7) "a" for the child's age and type of care, unless the department grants a waiver under rule 441—1.8(17A,217). Child care services are available through the child care assistance program to families that meet the requirements of 441—Chapter 170. An additional premium amount as a result of adding the child to the family's health insurance group.~~

(5) Medical transportation, food and lodging not covered by Medicaid ~~and the family's lodging and meals, if necessary,~~ when the child is receiving specialized care ~~or the child and~~ in a facility 50 miles or farther from the family home, when the family are required to stay overnight as part of a treatment plan is participating in services and to facilitate reunification with the child.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources.

1. When the siblings in a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child, to reimburse the family for expenses related to accommodating the needs of the sibling group.

2. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) and (8) No change.

b. The need for special services shall be ~~established by a report in the child's record from the private or public agency which had guardianship of the child, and substantiating information from specialists as defined in rule 441—201.2(600)~~ documented in the Adoption Subsidy Agreement. The family shall provide documentation of expenses to the department.

c. and d. No change.

ITEM 5. Amend subrule 201.7(8) as follows:

~~201.7(8) Rescinded IAB 3/12/08, effective 4/16/08. The child enlists in the military.~~

ITEM 6. Renumber rules ~~441—201.10(600) and 441—201.11(600)~~ as ~~441—201.11(600) and 441—201.12(600).~~

ITEM 7. Adopt the following new rule 441—201.10(600):

441—201.10(600) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

201.10(1) Eligibility for continuation of adoption subsidy shall be evaluated when the department has reasonable cause to suspect the adoptive parent is not providing financial support, or is no longer legally responsible for the child. This includes, but is not limited to, the following circumstances:

- a. The child is placed in out-of-home care.
- b. A person alleges the parents are not providing financial support to the child.
- c. A person other than the parent is awarded legal custody of the child.
- d. A person other than the parent is appointed as the guardian of the child.
- e. The child has applied for food assistance or other benefits.
- f. The child has not resided with the parent for the past 30 consecutive days.
- g. The parent is incarcerated.
- h. The parent is awaiting trial for criminal charges related to harm caused to a child in the home.

201.10(2) The department shall contact the child's parents via letter, telephone, or electronic or other means and document such efforts.

201.10(3) The child's parents shall provide documentation of support, including receipts, to the department upon request.

201.10(4) Upon completion of the department's evaluation of the child's continued eligibility for adoption subsidy, the department shall issue a written notice to the parents documenting required ongoing actions by the parents, including an expectation of continued cooperation by the parents to provide documentation of ongoing support to the child at the request of the department.

201.10(5) The department shall suspend adoption subsidy payments if the parents refuse to cooperate or if the department is unable to determine whether the parents are providing financial support or are legally responsible for the child.

201.10(6) Through a Notice of Decision, the department shall terminate the Adoption Subsidy Agreement upon a finding that the child is not being financially supported.

201.10(7) When the child has resided out of the parental home for 30 consecutive days, the department shall request a renegotiation of the Adoption Subsidy Agreement with the parents to reduce or suspend payments as agreed to by the parents.